

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5250 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

B L PATEL

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

MR HK RATHOD for Petitioner
MRS VASAVDATTA BHATT for Respondent No. 1
NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 25/06/98

ORAL JUDGEMENT

#. Rule. Mrs.Bhatt waives service of notice of Rule. Mr.B.L.Patel, a conductor working with the respondent has preferred the present writ petition. The respondent has initiated a departmental proceeding against the present petitioner for his alleged misconduct of 10-5-96. It is a claim of the petitioner that in the said departmental proceeding, no presiding officer was

appointed and the inquiry officer had played the role of both the prosecutor and judge. The said departmental proceeding was decided against the present petitioner by the order dated 25-7-96 by which he has been dismissed from services. As provided by service rule, the petitioner had preferred appeal before the appellate authority. When he preferred the same appeal, the same was beyond the period of limitation. He had also given separate application to condone the delay stating therein that as he suddenly lost his father, he was not in fit mental condition to take decision to prefer appeal. The appellate authority has rejected the claim for delay condonation and consequently dismissed the appeal as time barred. The petitioner claimed that as his father was ill and met with death, and hence he was perturbed and hence he could not prefer appeal in time. Said claim could not be said to be false claim in view of the death certificate produced by the petitioner. The law is by this time very well settled that in case condonation of delay caused in preferring the appeal, the court should take broader and liberal view and should not be too hyper technical. The appellate authority has not given any reason for rejecting delay condonation application, therefore in the circumstances, I hold that the appellate authority was not justified in rejecting the delay condonation application and not considering the same by holding that the same was barred by limitation. Therefore on that count, the prayer of the petitioner to consider and decide the appeal on merits deserves to be allowed.

#. I, myself don't want, at this juncture, to give any opinion regarding the claim of the petitioner that inquiry officer had performed both the role of prosecutor as well as the judge. The petitioner has raised the contention in his appeal memo relying upon a judgment of this court in SCA No.3456 of 1980. It is for the appellate authority to consider the said contention and to record its finding on the same. I, therefore, partially allow the present writ petition and order that the delay in preferring appeal stands condoned. The appellate authority should decide the appeal preferred by the present petitioner on the merits preferably within two months from today by passing a speaking detail order. In the circumstances, no order as to cost. This petition stands disposed of. Rule is partially allowed accordingly.

(KPP)